Filed 10/27/09 In re M.B. CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re M.B., a Person Coming Under the Juvenile Court Law.	
ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. T.G., Defendant and Appellant.	A123931 (Alameda County Super. Ct. No. OJ08009298)

Appellant T.G. is the mother of nine-year-old M.B., a female dependent child of the juvenile court. Mother appeals from the findings and orders after the six-month review hearing. She contends that respondent Alameda County Social Services Agency (Agency) failed to facilitate her visitation with M.B., and that the juvenile court should have modified the visitation order to address M.B.'s reluctance to visit with Mother. We affirm because M.B's reluctance is the result of Mother's inappropriate behavior which Mother must correct before visitation can benefit, rather than harm, M.B.

I. FACTS

A. Background

We restate the facts from the prior appeal in this matter, in which we affirmed the jurisdictional and dispositional findings and orders of the juvenile court. (*In re M.B.* (July 14, 2009, A121928) [nonpub. opn.].)

"*The Petition.* On March 13, 2008, [the Agency] filed a dependency petition alleging that Mother had failed to protect M.B., then eight, from serious physical harm or illness or the substantial risk thereof. (Welf. & Inst. Code, § 300, subd. (b).)[1]

"Specifically, the petition alleged, inter alia, that: Mother had used excessive physical discipline against M.B. on several occasions; Mother is developmentally delayed and has failed to adequately supervise M.B.; Mother has engaged in inappropriate sexual behavior in M.B.'s presence or when she was 'close by'; M.B. reported that Mother's boyfriend, R., had hit M.B.; and Mother 'has limited judgment as to what is appropriate parental conduct' toward M.B. and 'has significant judgment issues regarding males she may encounter.'

"*The Detention Report.* On March 14, the Agency filed a detention report recommending that M.B. be detained. The Agency reported that Mother was receiving services from Regional Center Family Services (Regional Center), but was not cooperating with Regional Center. The services were not effective in resolving the problems of parental judgment and physical abuse. Mother had been staying at a homeless shelter in the Fall of 2007. The shelter informed the Agency that Mother had

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"[1] Subsequent statutory references are to the Welfare and Institutions Code.

All dates are in 2008 unless otherwise indicated.

The dependency petition also alleged there was no provision for M.B.'s support. (§ 300, subd. (g).) This allegation was later stricken.

The petition also named M.B.'s father, who is not a party to this appeal."

'ongoing conflict' while staying there, and had hit M.B., cursed at her, and pulled her hair.

"Mother received assistance in obtaining an apartment. The Regional Center informed the Agency that Mother 'had been seen having sex with the groundskeeper at her apartment unit and having sex at Big Lots in the presence of' M.B.[2] The Regional Center also stated that Mother was not able to parent M.B.

"Mother denied hitting M.B. and having sex in her presence. M.B. was not doing well in school, but Mother denied this.

"In the past, Mother had shown poor judgment regarding men and 'may need assistance with determining who should be around' M.B. Mother 'did not appear to understand the concept of asking for help.'

"On March 14, the juvenile court ordered M.B. temporarily detained pending a contested detention hearing.

"*The Contested Detention Hearing.* The court held the contested detention hearing on March 17. Agency caseworker Katherine Moore testified that M.B. told her R. had hit her and she didn't want to be around him. Moore also testified that a Regional Center worker told her Mother could not parent M.B. Dee Dee Logan, Mother's parenting advocate at Regional Center, told Moore that she took Mother and M.B. shopping at Big Lots. Mother disappeared for 20 minutes and came back 'reeking' of a 'sexual odor.' The homeless shelter reported Mother used excessive physical discipline. M.B. told Moore that Mother had pulled her hair. [Fn. omitted.]

"Logan testified. She provided parental education to Mother. On M.B.'s birthday, Logan took her and Mother shopping at Big Lots. Mother said she had to go to the bathroom, and disappeared for at least 15 minutes. She returned with a new odor about her, 'pungent and probably sexual.' Logan had to drive Mother and M.B. home with the

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"[2] Big Lots is a store in San Leandro."

windows down. An older man had been with Mother in the same aisle of the store. When Logan asked Mother what she did in the bathroom, Mother replied: 'Hee, hee, hee.'

"Logan also testified that, contrary to Logan's instructions, Mother took M.B. to a park at night and stayed too long after dark. On one occasion, Logan went to the park to retrieve M.B., who would not get up off the ground.

"Logan also testified that Mother told her that R. hit M.B. with a belt in December 2007.

"Mother testified and denied that R. struck M.B. Mother also claimed she did not 'know anything about Big Lots,' and denied having sexual activity there. Mother denied striking M.B. or pulling her hair.

"The juvenile court ordered M.B. detained, finding a prima facie case that continuing M B. in Mother's home posed a substantial danger to her physical and emotional health.

"*Jurisdictional Report.* In the jurisdictional report, filed March 26, the Agency recommended out-of-home placement. The jurisdictional report noted that M.B. had told the caseworker that Mother had hit her. M.B. did not wish to return to Mother's care. In September 2007, another boyfriend of Mother, A., had touched M.B. inappropriately. Mother was present and made fun of M.B. and laughed. The Agency reported that Mother is mentally challenged, developmentally disabled, has poor impulse control, and regularly drinks alcohol. She has a history of aggressive behavior and physical abuse of M.B. She has poor judgment skills regarding male friends. Mother 'has demonstrated for many years an inability to parent safely without 24-hour supervision.'

¶ . . . ¶

"*Dispositional Report.* The dispositional report, filed April 30, noted that M.B. had 'adamantly' refused visits with Mother. Mother refused to begin working on her case plan, and continued to deny hitting M.B. or pulling her hair. Mother has 'poor

parenting judgment, anger management issues and she appears not to have an ability to understand how these issues impact' M.B.

"The court held a combined jurisdictional/dispositional hearing on May 1. Mother was present. The parties agreed to submit the matter on the reports, with Mother's counsel asking the court to take judicial notice of the testimony at the contested detention hearing. No party called witnesses. After brief oral argument, the juvenile court found that the allegations based on section 300, subdivision (b) were true.

¶ . . . ¶

"The court proceeded with the dispositional hearing [on July 23], heard brief oral argument, and ordered M.B. removed from the physical custody of Mother. The court found that there was clear and convincing evidence that remaining in Mother's home would 'cause a substantial danger to the physical health, safety, protection [and] physical or emotional well-being' of M.B. The court ordered M.B. placed in her foster home. The court ordered the Agency to arrange for visitation between M.B. and Mother 'as frequently as possible consistent with [M.B.'s] well-being.'. . ."

B. The Six-Month Review

The six-month review hearing was set for January 12, 2009.[3] In its report prepared for that hearing, the Agency recommended another six months of family reunification services. The Agency reported that Mother had been involved in a domestic dispute with her live-in boyfriend on November 18, 2008, and was arrested for assaulting the boyfriend with a metal pipe. As a result of the incident, Mother had moved in with her grandmother and the Regional Center ordered her to attend more extensive anger management/domestic violence classes. The Agency reported that Mother had not been in close contact with her social worker and was only in minimal compliance with her

[3] Subsequent dates are in 2009 unless otherwise indicated.

reunification case plan. Mother had not consistently attended anger management sessions and had yet to begin parenting classes.

Mother "has expressed her desire to reunify" with M.B., but "does not understand or acknowledge why [M.B.] is in the foster care system." Mother understands that reunification requires her to actively work on her case plan and learn to manage her anger, but she "has difficulty understanding and acknowledging why [M.B.] has been taken out of her care." She "remains angry" and communication with her is "difficult."

With regard to visitation, the Agency reported that it had scheduled an initial visit between Mother and M.B. on December 18, 2008. But this visitation apparently never took place. Mother had "only two phone contacts" with M.B. during the six-month review period. One of those calls "resulted in [M.B.] crying profusely." The social worker asked Mother what had happened, and Mother admitted she had asked M.B., "Why did you tell people I hit you?" The Agency reported that Mother "inappropriately used interrogation as her initial approach during [the two telephone] contacts." M.B. "has since then refused to have any contact or visits with her mother."

The Agency recommended that reunification at present would be detrimental to M.B., because Mother had not made substantial effort to comply with her case plan, including addressing her anger management and domestic violence issues. M.B. continued to refuse contact "after [Mother] repeatedly questioned [M.B.] about the allegations in the petition."[4] The Agency recommended that Mother "must agree to engage in appropriate conversation with [M.B.], and [that] discussions of the allegations with [M.B. are] not permitted."

At the January 12 review hearing, M.B.'s father asked for a contested hearing. Mother asked the court to find that the Agency had not provided reasonable services, on the ground that the "reunification plan . . . does not provide for visitation." Mother

[4] M.B. also told her social worker that Mother "is mean, . . . always yelled at me, and always gave me a whoopin."

complained that she "has had an opportunity to visit with her child exactly no times in the last six months." Mother argued that visitation had to be facilitated by the Agency, in a "therapeutic setting" if necessary, and that visitation could not be delegated to M.B. The juvenile court responded that "litigation with respect to that issue will go forward" at "the next [i.e., contested] hearing . . . ."

The court set the matter for a contested hearing on January 23, to address visitation as well as other issues. Pending that hearing, and in an order dated January 12, the court adopted the Agency recommendations that foster placement continue, that the Agency had offered reasonable services, and that Mother had made only minimal progress.

At the January 23 hearing, father and the Agency represented that they had reached an agreement, and father no longer contested the six-month review. Mother again asked the court to find that reasonable services had not been provided, on the ground that there had been no visits between her and M.B. Mother again argued that visitation could be in a therapeutic setting, and could not be delegated to the child. Mother complained that "in the nearly nine months that [M.B.] has been [detained, and in foster placement] there have been no visits with her . . . ."

The Agency responded that M.B. was not dictating whether visitation would occur, but that visitation was currently "a negative experience" for M.B. for the reasons set forth in the report—i.e., Mother's behavior. "As far as visitation services are concerned, it is necessary for the Agency to always be evaluating them, the appropriateness of visitation and to arrange visitation to the extent that it is consistent with the well-being of the child. . . . [¶] The [social] worker in this case has not dropped the ball with respect to that mission and for factual and good reason visitations have not taken place."

The court asked Mother if she wished to proceed with the contested hearing. Mother's counsel replied, "[I] think it is a matter for argument and submission. *It is*

strictly a legal issue. I will ask the court to accept as true the contents of the report and base its decision thereupon [*sic*]." (Italics added.)

The court found that Mother had not participated in parenting classes and that M.B. "refuses to have contact with her. Based on the record before the court, it would be detrimental to her to be forced to have contact with her mother if she does not want it. This can be developed in everybody's best interest over the next period. Things change, relationships improve, but we have to do that so everyone's interests are protected, particularly this child [M.B.]."

In an order dated January 23, the court adopted the recommendations of the Agency, and found—as it did on January 12—that reasonable services had been provided, but Mother had made minimal progress. The court found foster placement would continue, and that returning M.B. to Mother at the present time would be detrimental in light of the lack of substantial progress with her case plan. The court ordered another six months of reunification services. The court ordered visitation to continue "as frequent[ly] as possible consistent with [M.B.'s] well-being." The court added: "We want [M.B.] to visit [Mother], and we want to make sure that she does it in her best interest so she won't be damaged in any way emotionally or personally."

On February 2, Mother filed a notice of appeal from the court's findings and orders of *January 12*, "Finding Reasonable Reunification Services were offered or provided in the absence of any arranged visitation over a period of nine months."

II. DISCUSSION

In her opening brief, Mother challenges the January 23 visitation order and complains of the lack of visitation. Specifically, she contends that there is insufficient evidence to support the court's finding that reasonable services were offered, on the ground that the Agency "did not make any effort to remove the barrier to visits." Mother also contends that the juvenile court should have modified the visitation order to address M.B.'s reluctance to visit with Mother. She claims that the visitation order, as it stands,

impermissibly grants M.B. "veto power over visits." We disagree with Mother's contentions for the reasons set forth below.

First, we address a procedural objection raised by the Agency. Mother's notice of appeal identifies the January 12 order as the order appealed from. The Agency thus argues that the January 23 visitation order, the subject of Mother's present challenge, is beyond the scope of this appeal. (And, although the Agency does not precisely articulate the point, the January 12 order is an interim order and is thus not final and appealable.)

The Agency notes that a notice of appeal must identify the particular judgment or order being appealed. (Cal. Rules of Court, rule 8.400(c)(2).) The Agency, relying on *In re Miracle M.* (2008) 160 Cal.App.4th 834, 846 (*Miracle M.*), argues that "A parent cannot appeal from an order or finding that is not even mentioned in her notice of appeal."

The law once required strict adherence to the requirement of precise identification of the particular order or judgment appealed from. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 563, pp. 642-643.) But the modern view is more lenient and invokes the concept of liberal construction. (*Id.* at § 564, pp. 643-644.) California Rules of Court, rule 8.400(c)(2), while stating that it "is sufficient if [a notice of appeal] identifies the particular judgment or order being appealed," also states that a notice of appeal "must be liberally construed."

Generally, courts will liberally construe a notice to protect the right of appeal if it is reasonably clear what the appellant was trying to appeal from and the respondent could not possibly have been prejudiced or misled. (See 9 Witkin, *supra*, § 564 at p. 643; *In re Joshua S.* (2007) 41 Cal.4th 261, 272; *Vibert v. Berger* (1966) 64 Cal.2d 65, 67-68; *In re Madison W.* (2006) 141 Cal.App.4th 1447, 1450-1451.) "[A] notice of appeal that specifies a nonappealable order or other interlocutory determination may be construed to refer to an existing appealable judgment or order that could and should have been specified." (See 9 Witkin, *supra*, § 564 at p. 643.)

In the present case, Mother filed a notice of appeal designating the January 12 order—but it was clear she was challenging the visitation order made at the January 23 hearing, an order which predated her February 2 notice of appeal. No visitation order was made at the brief January 12 hearing, and Mother's notice referred to the lack of visitation during a nine-month period, mirroring her counsel's argument at the hearing on January 23. There is no possibility that the Agency has been misled or prejudiced by Mother's failure to be more precise. Indeed, the Agency has devoted considerable briefing to the merits of the January 23 order. This is a simple case of a party erroneously designating an interlocutory order rather than the ensuing final order it obviously meant to appeal from.

We construe Mother's notice of appeal to include the January 23 order. We turn now to the merits of Mother's appeal.[5]

Reasonable Services. Our review of the juvenile court's finding that reasonable services were provided is governed by the substantial evidence test. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) We must view the evidence in the light most favorable to the Agency. (*Ibid.*) We do not reweigh the evidence, and must accept as true the evidence most favorable to the finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) We note that Mother's trial counsel did not proffer any evidence, but submitted on the six-month review report—counsel asked the juvenile court to accept as true the contents of the report and decide the legal issue of visitation.

Mother argues that the juvenile court did not address the issue of visitation "in any meaningful way." The record belies that claim. The Agency's report showed that

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[5] *Miracle M.* did not involve related interlocutory and final orders, but rather two orders which were unconnected—one terminating parental rights and one determining that ICWA did not apply. (*Miracle M., supra,* 160 Cal.App.4th at p. 846.) Moreover, the case did not cite or discuss the authorities we have reviewed above.

In light of our conclusion, Mother's motion to correct the record—to essentially amend the notice of appeal to identify the January 23 order—is denied as moot.

Mother had not been diligent in attending classes on parenting and, more significantly, had behaved inappropriately in telephone contact with M.B. Mother's interrogating M.B. on the allegations of the petition caused M.B. detriment. The juvenile court did not fail to address visitation—rather, the court properly concluded from the evidence that Mother's behavior was having a negative impact on visitation with M.B. and Mother had to alter that behavior to enable visitation. The court's ruling made it clear that Mother had the opportunity to change her behavior and make it possible to participate in visitation with her child. Thus, contrary to Mother's claim on appeal, the juvenile court *did* address M.B.'s reluctance to visit—and correctly determined that Mother is the cause of that reluctance.[6]

Mother also argues that by failing to facilitate visitation the Agency failed to tailor the reunification plan to a parent of special needs, i.e., Mother's and M.B.'s developmental disabilities. It appears that this argument was not raised at the six-month hearing. In any case, there is no evidence that the Agency has failed to take the special needs into account.

The juvenile court's finding that the Agency provided reasonable services is supported by substantial evidence.[7]

Modification of Visitation Order. Mother contends the court should have modified the visitation order. She argues, as she did in the prior appeal, that the visitation order—which provides for visitation as frequently as possible consistent with M.B.'s well-being—was tantamount to a grant of veto power over visits with M.B. In the prior appeal, we considered and rejected this contention. The order entrusts visitation to the

[6] Mother complains that the court should have ordered therapeutic visits. As an appellate court, we cannot micromanage the juvenile court's discretion. In any case, M.B. is no longer in need of therapy.

[7] We note that Mother's counsel argues from alleged facts and inferences which find no support in the record on appeal. We again remind counsel this is not a matter for our de novo review.

discretion of the Agency. This is proper. (See, e.g., *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1011.)

III. DISPOSITION

The six-month findings and orders are affirmed.

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Marchiano, P.J.

We concur:

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Margulies, J.

_____
Banke, J.